

Statement by William E. Colby Before the Senate Government Operations
Committee on 23 January 1976

Mr. Chairman:

Thank you for this opportunity to discuss congressional oversight of our intelligence activities. Despite all the excitement in recent months over CIA and other intelligence activities, this is one of the most critical issues which must be faced in any serious investigation into our Government's intelligence activities.

Traditionally, intelligence is assumed to operate in total secrecy and outside the law. This is impossible under our Constitution and in our society. As a result, when CIA was established in 1947, a compromise was made under which broad, general statutes were drawn, and carefully limited arrangements for congressional review were developed. It was then believed necessary to sacrifice oversight in the interest of secrecy.

Our society has changed, however, and a greater degree of oversight is now considered necessary. U.S. intelligence has already moved out of the atmosphere of total secrecy which previously characterized it. We who are in intelligence are well aware of the need to retain public confidence and congressional support if we are to continue to make our contribution to the safety of our country.

Thus, from the earliest days of the current investigations, I have stressed my hope that they will develop better guidelines for our operations and stronger oversight, to ensure that our activities do remain within the Constitution and the laws of our country.

But I have not swung all the way to the other extreme of the pendulum-- to the position that there can be no secrecy. General Washington once said, "Upon secrecy, success depends in most enterprises of [intelligence]." We have many secrets in America which are necessary to the functioning of our democracy--the ballot box, the grand jury, and our attorney-client relationships. The secrecy of our sources of intelligence is equally important to the preservation of our democracy, and even of our nation in the turbulent world in which we live.

In 1947 we took a small step away from total secrecy by enacting general statutes and constructing careful oversight arrangements in the Congress. Proposals now under consideration would alter these arrangements to assure more detailed oversight. But it is essential that the pendulum not swing so far as to destroy the necessary secrecy of intelligence, or destroy intelligence itself in the process.

In former comments on this subject, I many times said that it was up to Congress to organize itself to exercise the necessary oversight of our intelligence activities. This is still true, but I believe that recent experience permits me to draw some conclusions on this topic which this Committee has graciously invited.

The matter has been extensively studied within the Administration during the past year, as President Ford shares many of the concerns of the Congress on this subject. The Rockefeller Commission, the Murphy Commission, our discussions with the Select Committees and other committees reflect this interest. A number of detailed studies were also made within the Executive

Branch, reaching the level of two extended meetings President Ford had with National Security Council members.

The views of the Administration are not yet formally fixed, so the comments I will make will be personal and based on my experience. My participation in the studies above, however, assures me that my views are in general compatible with the thrust of what President Ford will probably decide, although there may be some variation in the details.

Too great a stress on secrecy has led to situations in which members of Congress who were fully briefed on intelligence activities pleaded later that they had never heard of them when they came to public attention. One of the chairmen of our committees once indicated on the floor of the Senate that he had no inkling of one of our operations, although he had approved the specific appropriations necessary to continue it. His statement certainly kept the secrecy of his participation in our operation, but at the sacrifice of implying that our intelligence activities were operating without oversight and control. Indeed he added to public concern that we constituted some independent "invisible government."

On a number of occasions, especially since 1956, proposals have been made to establish a joint committee on intelligence, but the Congress has never seen fit to adopt them. During this past year jurisdictional problems have been highlighted in the Congress as a result of two things:

First, foreign intelligence today is not primarily limited to military intelligence, as it may have been in earlier years. It also is now of interest to those committees concerned with our economy, our foreign relations, our agriculture, space and a wide variety of other activities. As a result, we have had a proliferation of demands for congressional review of sensitive foreign

intelligence matters in these fields by other committees to the degree that 59 Senators and 149 Representatives have been briefed on some aspect of our activities this past year alone.

Second, during 1974, there was much congressional interest in our covert action activities, sparked by exposure of testimony I gave to one of our oversight committees on the subject. Both the House and the Senate, by 3 to 1 majorities, turned down proposals that CIA be barred from such activities. But in December 1974, a provision was added to the Foreign Assistance Act which required that any CIA activity abroad other than intelligence gathering could only be conducted if it were found by the President to be important to the national security and reported "in a timely fashion" to the appropriate committees of the Congress. Together with the two Select Committees, these "appropriate committees" now number eight.

I might quote, Mr. Chairman, from the conference report which led to the adoption of that new act, and it says that "The Committee of Conference agrees that strict measures should be taken to ensure maximum security of the information submitted to the Congress pursuant to this provision."

The Executive Branch is fully complying with that provision of the law. The President made the appropriate findings, and briefings were given to the committees according to whatever arrangements the committees made. It was stressed and understood on all sides that these matters were sensitive, secret operations whose exposure would cause political damage to our foreign policy as well as frustration to the operations concerned. The result of the year's experience, in my mind, is clear. The system won't work. Every one of the new projects that were subjected to this process has leaked into

the public domain. I am prepared to argue the value of each of these projects, but that is not my current point. The fact is that a secret operation conducted precisely according to the procedure set up by the Congress cannot be kept secret. I believe it essential to repeal that procedure and replace it by another which will include provisions for adequate secrecy.

In this Bicentennial year, it is appropriate to note an earlier American experience with this problem. On November 9, 1775, the Continental Congress adopted a "resolution of secrecy" under which any member who disclosed a matter which the majority had determined should be kept secret was to be expelled "and deemed an enemy to the liberties of America." On November 29, 1775, the Congress established the Committee on Secret Correspondence and gave it foreign intelligence responsibilities, managing a network of secret agents in Europe. This Committee took steps to protect the secrecy of its intelligence activities by sharply restricting access to operational matters. On one occasion, the Committee justified the secrecy of its information as follows:

"Considering the nature and importance of it, we agree ... that it is our indispensable duty to keep it secret, even from Congress ... We find, by fatal experience, that Congress consists of too many members to keep secrets."

Mr. Chairman, at that time there were 56 representatives in the Congress, compared to the 208 that I reported briefing during 1975.

If the Congress should decide to adopt new oversight arrangements, I believe it should establish a representative group to oversee intelligence activities on Congress' behalf. This representative group could be a joint committee or other arrangement. In any event a representative group should consist of a restricted number of members so that we do not involve the large numbers of Congressmen currently briefed on our sensitive activities.

The representative character of such an oversight body must be respected by us in the Intelligence Community, so that we can make available the information it needs to do its job.

At the same time, arrangements can and should be developed between such a representative body and the Intelligence Community by which reasonable limits are established as to the matters made available even to it. In my present post as Director of Central Intelligence, I do not insist, for example, upon knowing the name of a foreign agent in some dangerous situation. It is not necessary to my duties that I know his specific identity. It is essential that we be able to assure our foreign agents abroad, a number of whom have already expressed their alarm and limited what they tell us, that their names will be totally protected, since their lives or livelihoods are at peril. I would expect that a responsible representative committee of Congress would similarly not request such specific identification, as our current oversight and Select Committees have not requested such sensitive information. Understandings of this nature between a responsible oversight body and the Intelligence Community would be more productive than adversary debates over either branch's "right" to have or to withhold such information.

A responsible oversight body must not discourage the Intelligence Community from conducting its own investigations and correcting its activities. A great portion of this past year's investigations has consisted only of public repetition of the private reviews by the Intelligence Community of its own activities. Since the full story of American intelligence remains secret, the impression is left with our public that what was revealed is characteristic

of the whole. The experience has done little to encourage objective and hard-hitting self-examination in the future. CIA's collation of a list of some questionable activities in the domestic field was used as the basis for sensational charges of a massive illegal domestic intelligence operation. In truth, our misdeeds were few and far between, as the final Rockefeller Commission report reveals. CIA's investigations into possible assassination activity, which led to specific directives in 1972 and 1973 against such activity, have been the basis for sweeping allegations that assassinations are part of our function. We never assassinated anyone, as the Senate report on intelligence reveals. And our own post-mortems of our performance in various intelligence situations have been selectively exposed to give a totally erroneous impression of continued failures of American intelligence. In fact, we have the best intelligence in the world. But we cannot keep it that way if every one of its corrective efforts is trumpeted to its enemies.

In the consideration of any or altered oversight arrangements, the Congress should, I believe, deal with the problem of proliferation of congressional review of intelligence activities. I strongly urge that oversight be concentrated exclusively in the minimum number of committees necessary to effectively conduct it, which to me means one. Otherwise we are in danger of reverting to the situation of reporting to a myriad of committees and exposing parts of our activities in all directions. It should be possible to concentrate congressional oversight, perhaps arranging that the oversight committee have representation from the other standing committees with interest in this subject.

The issue of giving prior notice to Congress of sensitive intelligence operations has been raised, Mr. Chairman. I believe this is a thoroughly false issue. The present statute calls for the appropriate committees to be informed "in a timely fashion" with respect to activities abroad other than intelligence gathering. Our regular oversight committees are kept currently informed of major developments, and each year they review our appropriation requests in great detail.

A requirement of prior notice before any intelligence activity could be undertaken would, in my view, conflict with the President's constitutional rights, would be totally impractical during times of congressional recess when crises can arise, and would add nothing to the ability of the Congress to express its views about any of our activities. We currently inform the Congress on any decision immediately, although the actual hearing may be delayed by the committee in question for several weeks. Almost none of our activities are single-step operations which take place on only one occasion. An intelligence or covert action operation is generally a continuing effort running over some time. Informed of such an activity, a committee has every ability to express the concern of its individual members, to vote in committee its opinion with respect to the activity, to appeal to the congressional leadership, and even to seek an appointment with the President himself. The committee also retains the ultimate legislative or appropriation sanction, if its views are not given due weight.

The unilateral exposure of an operation to public notice is not the solution. In essence, the theory adopted by some is that the right to expose such operations constitutes a super-constitutional individual veto of any

secret activity. We cannot run such secret operations, Mr. Chairman, if Congressmen confirm to inquiring newsmen operating on a lead that indeed they were given a secret briefing on a covert operation in a certain country, instead of refusing to comment. Neither can we run secret operations if individual Congressmen announce that there are three other operations which have not yet been disclosed, thereby stimulating every investigative reporter in Washington to determine the specifics thereof by some hypothetical questions. And we cannot conduct covert operations if a committee puts out a report which refers to an activity which leaves out the name of the country or individual concerned, but gives enough evidence for any amateur sleuth to identify it beyond a shadow of a doubt in time for its identification to be carried with the news story of the report.

An essential element of new congressional oversight arrangements is better procedures for protecting sensitive information. Senate Rule 36 (3) and (5) states that confidential communications from the President or head of any department are to be kept secret unless the Senate votes. But the Senate, on November 20th last year, failed to vote on the release by the Select Committee of information which the President specifically requested be kept secret and in the face of my request that certain names of CIA personnel therein be deleted. In the House of Representatives, Rule XI.2.(e)(2) provides that the records of any committee are open to any member, which on at least one occasion has led to the exposure of certain CIA operations despite the written promise of a Member to keep them secret.

The arrangements for Congress to receive and protect sensitive information are most imperfect. A prior security clearance of staff members and termination of employment for disclosure are hardly adequate sanctions to ensure the protection of sensitive intelligence sources which can produce substantial royalties for its disclosure. The extensive briefings and indoctrination and the secrecy agreements employed in the Executive Branch have even proved inadequate in the state of our present legislation. With respect to staff members, therefore, I believe it essential that a regular procedure of security protection be established. This must be enforceable not only by indoctrination and discipline but also by sanctions. These are contained in legislation which I have proposed and which is about to be recommended in the Executive Branch to cover those who voluntarily undertake the obligation of secrecy as an aspect of their employment. This proposal would apply equally to Executive branch employees and congressional staff members who obtain privileged access to our intelligence secrets. With respect to Members of Congress themselves, we must, of course, look to the self-discipline of the two Houses with respect to their membership.

Mr. Chairman, we also need a procedure to determine the declassification and public release of those secrets that no longer need to be protected. This cannot be left to the individual staff member in the Executive or the Legislative Branch. Under the Constitution, it cannot be assumed by the Legislative Branch alone and any such contention would inevitably restrict the flow of sensitive information from the Executive. This could consist of an agreement that if the committee decides on release, the President has reasonable opportunity to certify that the release would be detrimental to the national security, and

his determination then would govern in the absence of further resolution of the constitutional questions involved. And this must apply to any release of the information, so as not to lead to an absurd situation in which a committee agrees not to release individual reports of secret activities but then proposes to publish them in its final report.

In conclusion, Mr. Chairman, I believe that congressional oversight of our intelligence activities can be strengthened. The degree of oversight can be increased relative to that in the years in which there was a general consensus that these matters were better not known by outsiders. The structure can be improved by focusing responsibility so that a depth of knowledge and expertise about our intelligence operations can be developed. The structure can also be improved by clear assignment of responsibility for exclusive supervision of our intelligence activities to a limited number of members of the Congress, representing the Congress as a whole, who would have full access to all information appropriate to exercise their responsibilities. And congressional oversight can be improved by making arrangements with Congress to protect the sensitive intelligence activities of our Government in the same way as we protect other secrets essential to the survival of American democracy. Executive Branch supervision can also be improved by ensuring the discipline of those in the intelligence profession and of their supervisors as to their respect for these important national secrets, and by giving us the ability to enforce such protection against those who would wantonly destroy them. These improvements, Mr. Chairman, in supervision of our intelligence activities would have truly more long-lasting value as a result of this year of investigation

than any other single action taken by the Congress. They would be a fitting conclusion to this year of investigation of intelligence--so that our intelligence service will be responsible to our Constitution, its legislative oversight will be equally responsible, and we will continue to have the best intelligence in the world.

It will give, Mr. Chairman, a new meaning to the initials CIA, Constitutional Intelligence for America, with equal stress on the needs of all three: the Constitution, intelligence, and especially America..